



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200400578

Issuance Date:

October 8, 2004

Stream:

UN Trib to Rockhouse Creek

Closing Date:

November 8, 2004

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (reference above)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Elk Run Coal Company, Inc.
PO Box 497
Sylvester, WV 25193

LOCATION: The proposed project is located on an unnamed tributary to Rockhouse Creek near Dorothy, Raleigh County, West Virginia as depicted on the attached Drawing 1. Drawing 2, labeled “Vicinity Map,” shows another view of the general location area for the proposed mine. Rockhouse Creek flows into Clear Fork, which joins with Marsh Fork to form the Big Coal River, which along with the Little Coal River forms the Coal River, a Section 10 (navigable) water of the United States.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the U.S. in conjunction with the construction of one valley fill and one road crossing at the White Bishop Deep Mine. The total impacts to waters of the United States would include 650 linear feet of temporary impacts. The project would disturb approximately 28.47 acres. The work involves the creation of one valley fill and one road crossing in an unnamed tributary to Rockhouse Creek. The West Virginia Department of Environmental Protection (WVDEP) approved the applicant’s surface mining application on July 30, 1997 (U-3002-94) pursuant to the Surface Mining Control and Reclamation Act of 1977. This proposed valley fill and road crossing were authorized on June 16, 2004 by the Huntington District under the January 15, 2002 Federal Register, Final Notice of Issuance of Nationwide Permits (67 FR 2020), Nationwide Permit 21.

The United States District Court for the Southern District of West Virginia at Huntington issued a Memorandum Opinion and Injunctive Order in the case of Ohio Valley Environmental Coalition, et al v. William Bulen, Colonel, District Engineer, U.S. Army Corps of Engineers, Huntington District, et al. (Civil Action No. 3:03-2281). In this Order, the Court ruled that “the Corps is hereby enjoined from issuing authorizations pursuant to NWP 21 in the Southern District of West Virginia. With regard to the eleven specific mining sites challenged by the plaintiffs, the Corps is ordered to suspend those authorizations for valley fills and surface impoundments on which construction has not commenced as of today, July 8, 2004.” Subsequently, on August 13, 2004, the Court issued a further ruling and a supplement to its July 8, 2004 order. In this ruling the Court clarified it had “enjoined only those projects that had not commenced construction as of July 8, 2004, to provide relief to the plaintiffs and also preserve the mining industry’s ability to operate in the Southern District of West Virginia while applying for individual permits pursuant to Section 404(a) of the Clean Water Act.” The Court also supplemented its prior order of July 8, 2004 as follows: “The Corps is ordered to suspend all existing NWP 21 authorizations for valley fills and surface impoundments in the Southern District of West Virginia on which construction had not commenced as of July 8, 2004.” The NWP 21 authorization for this project was thereby suspended for “valley fills and surface impoundments on which construction had not commenced as of July 8, 2004.”

Information submitted by the applicant indicated approximately 688 cubic yards of fill material (90% rock and 10% earth and gravel) would be placed in the stream in association with the valley fill construction. The proposed project would temporarily (10 years) impact 650 linear feet of intermittent stream. These proposed fills would impact the stream with a watershed of approximately 168.69 acres above the downstream end of the proposed pond access road, the most downstream structure associated with this project. The proposed sediment pond would be located outside of jurisdictional waters of the U.S.

Rockhouse Creek flows into Clear Fork, which joins with Marsh Fork to form the Big Coal

River, which along with the Little Coal River forms the Coal River, a Section 10 (navigable) water of the United States. Table A of this public notice details the proposed mining activities and corresponding information with respect to the proposed impact locations and stream loss (linear feet and acres).

According to the applicant, the purpose of the project is to mine coal.

Plans for the proposed work are attached to this Notice.

MITIGATION PLAN: To compensate for stream impacts, the applicant proposes to mitigate on-site through in-kind restoration of aquatic resources. The on-site mitigation would involve the restoration and re-establishment of an enhanced stream bed of the unnamed tributary to Rockhouse Creek proposed to be impacted by this project. The stream restoration and enhancement plan would use Rosgen-type and other natural stream restoration techniques, including the use of log/pole and boulder placement for establishment of riffles, pools, and aquatic habitat. A 50-foot vegetated riparian zone (25 feet on each bank) would be established along the proposed mitigation site.

WATER QUALITY CERTIFICATION: Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This office previously coordinated with the WV Division of Culture and History during review for authorization under Nationwide Permit #21 concerning the proposed project. The WV Division of Culture and History indicated no "...historical, architectural, or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be affected by [these] project[s]." A copy of this public notice will be sent to the State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: This project is located within the known or historic range of the following federally-listed species:

Virginia spiraea
Indiana Bat
Eastern Cougar

The Huntington District has determined this project is not likely to jeopardize the continued existence of any endangered or threatened species. Any habitat modifications affecting threatened and endangered species are authorized as part of the WVDEP's permitting process under SMCRA. This notice will serve as coordination with the U. S. Fish and Wildlife Service regarding threatened or endangered species. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as


amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b)(1) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

If you have any questions concerning this public notice, please call Jim Spence of the South Regulatory Section at 304-399-5710.

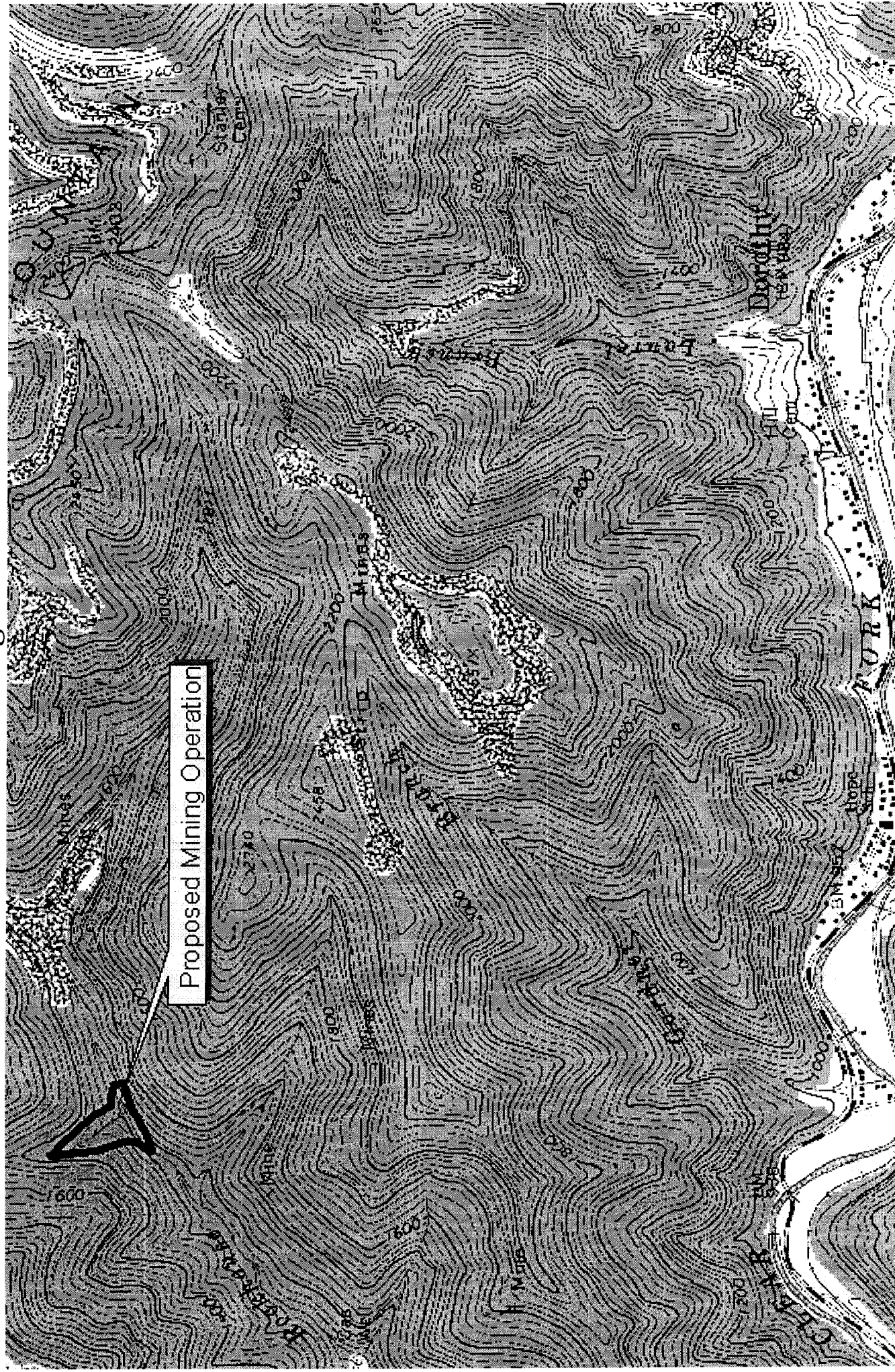

Ginger Mullins, Chief
Regulatory Branch

(W)

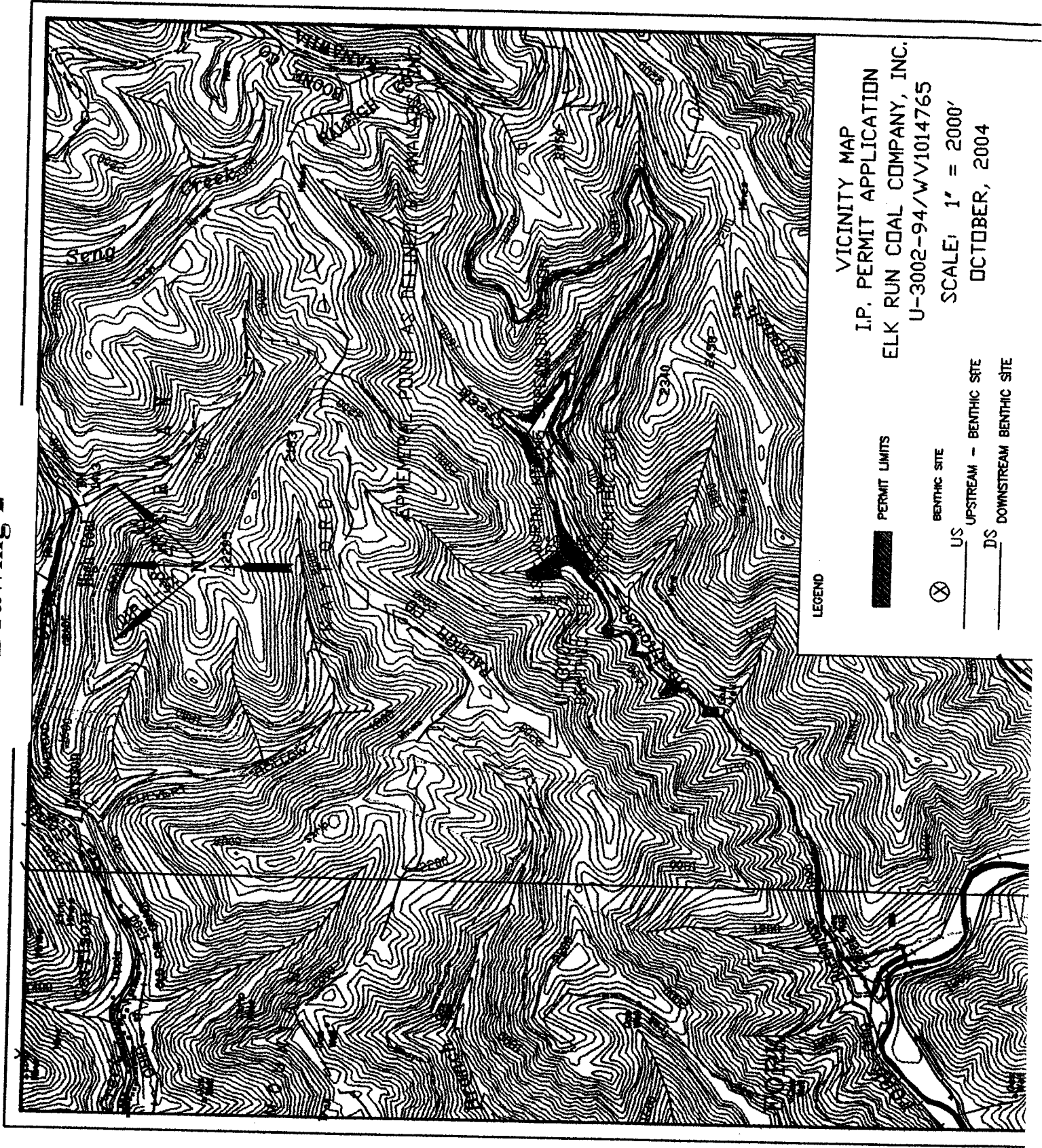
**Elk Run Coal Company
200400531-Rockhouse Creek
WVDEP Application No. U-3002-94**

[illegible]

Drawing 1

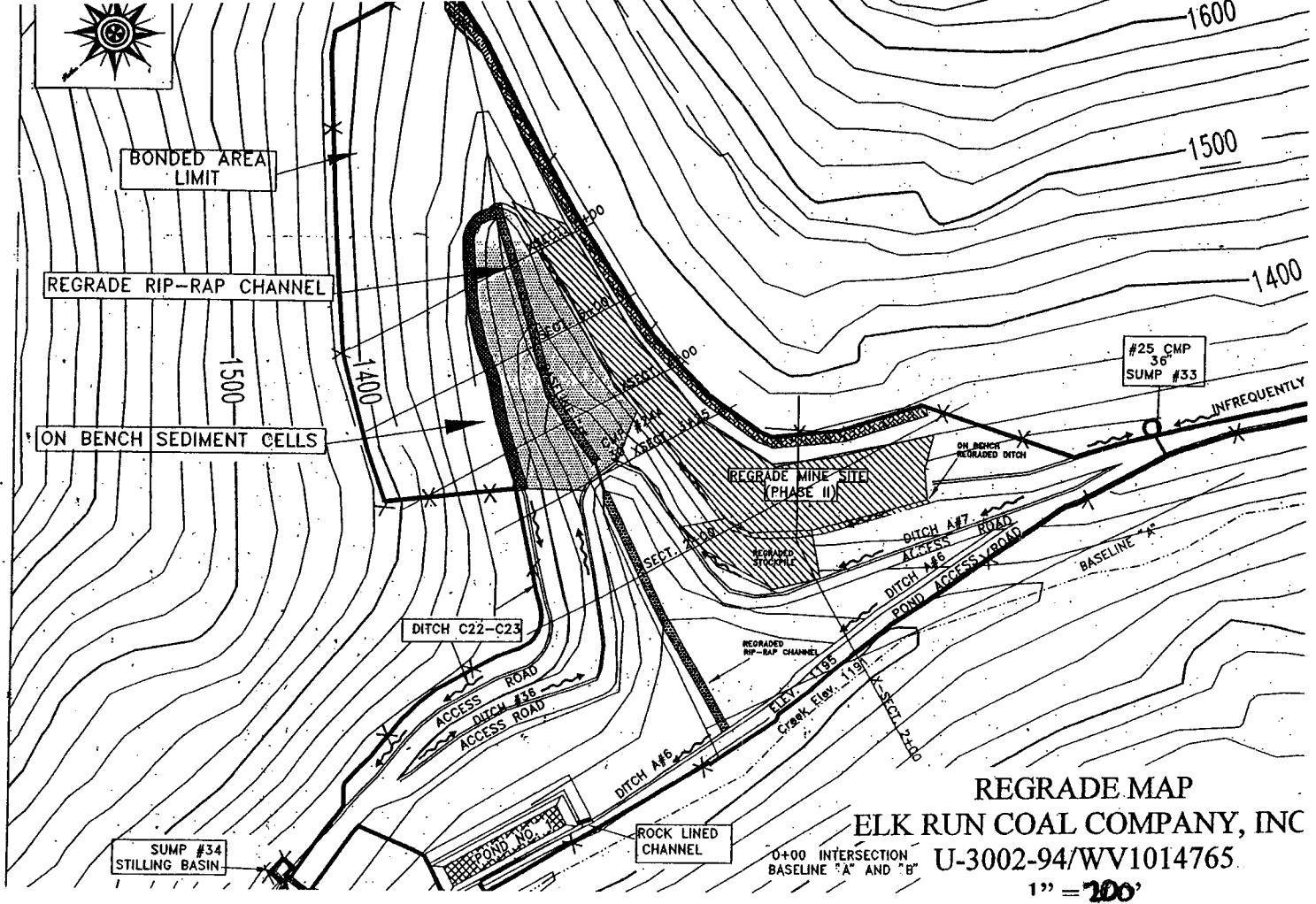


Drawing 2

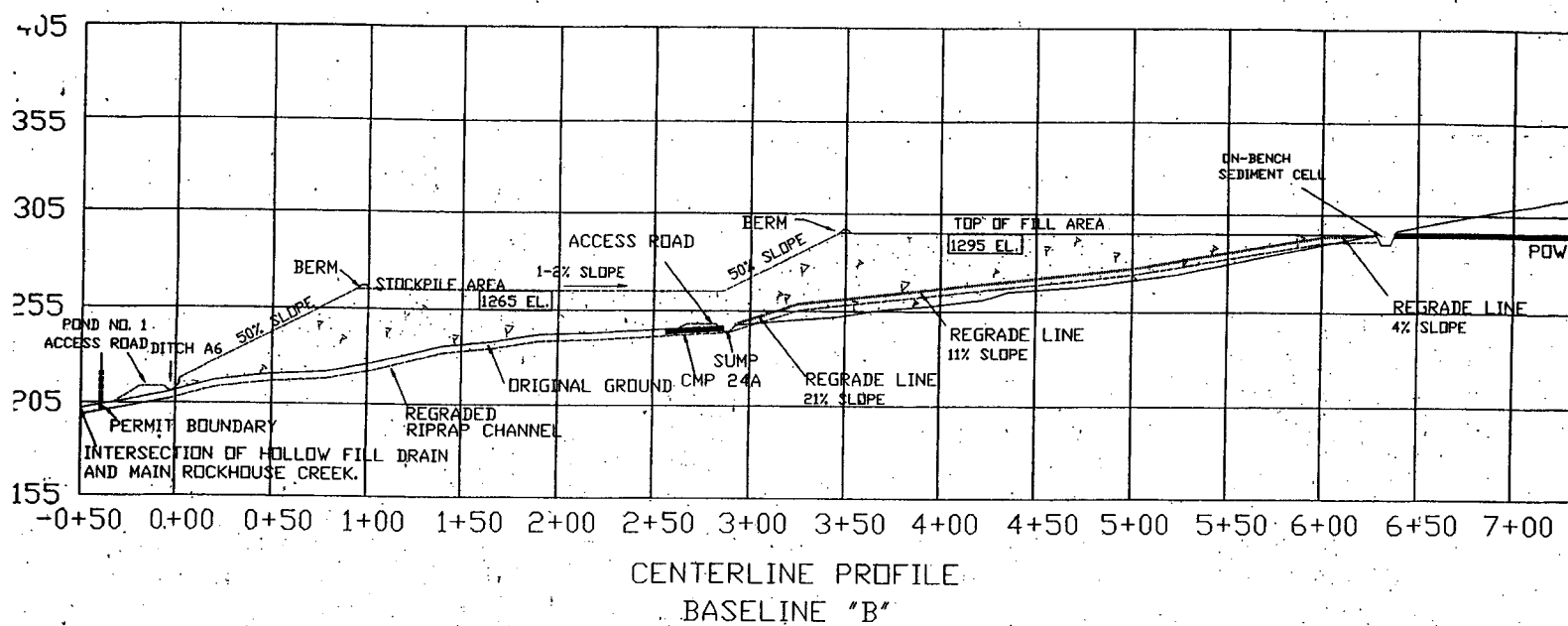


LEGEND

- VICINITY MAP
I.P. PERMIT APPLICATION
ELK RUN COAL COMPANY, INC.
U-3002-94/WV1014765
SCALE: 1" = 2000'
OCTOBER, 2004
- PERMIT LIMITS
BENTHIC SITE
US
DS
UPSTREAM - BENTHIC SITE
DOWNSTREAM BENTHIC SITE



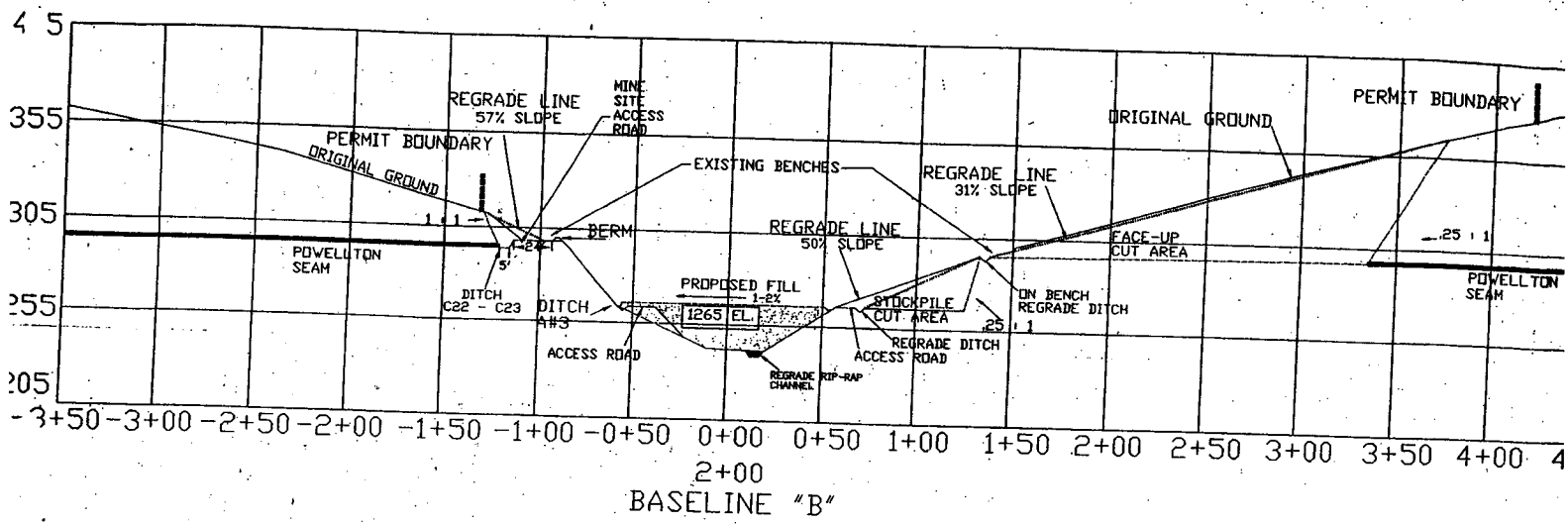
Drawing 3



1"=100'

Drawing 4

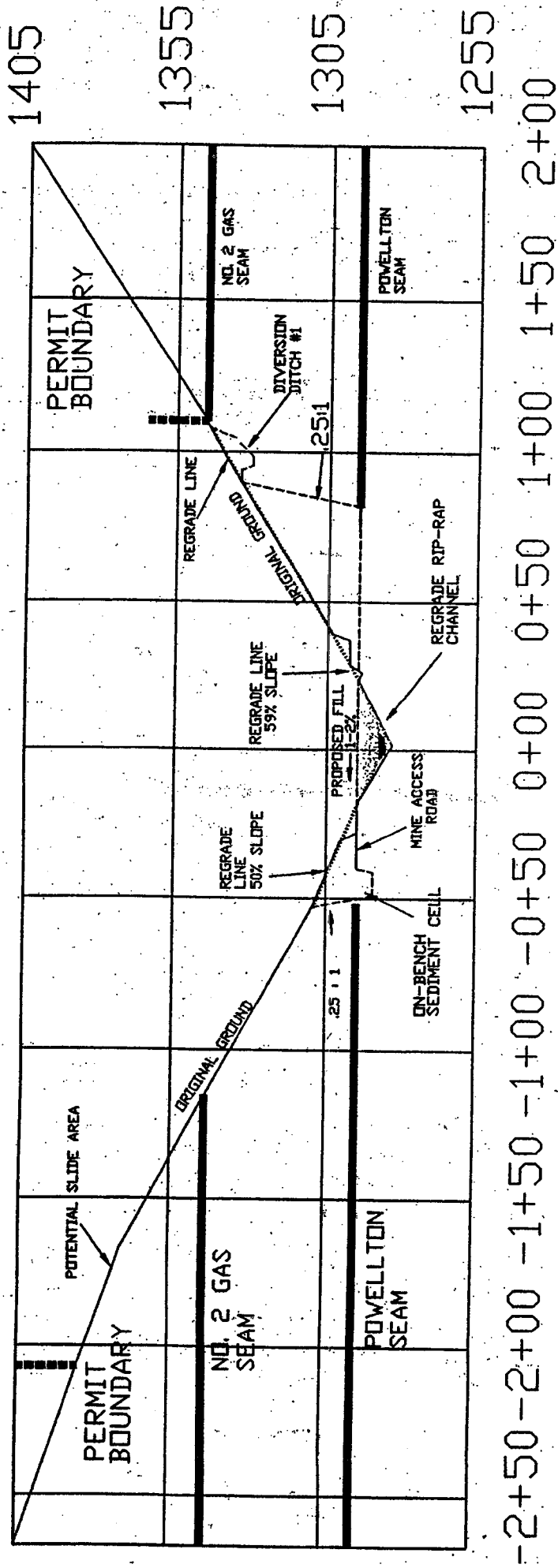
BASELINE "B"



1" = 100'

Drawing 5

Drawing 6



6+00
BASELINE "B"

1"=50'